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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/009,830 | 12/17/2001 | Alan Stephenson | | 1190 |

7590

02/24/2004

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| EXAMINER |
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BRYANT, DAVID P

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| ART UNIT | PAPER NUMBER |
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3726

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DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,830

Applicant(s)

STEPHENSON, ALAN

Examiner

David P. Bryant

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-78 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 48-66, 71-73 and 75-77 is/are allowed.
6) ☒ Claim(s) 67, 68, 70, 74 and 78 is/are rejected.
7) ☒ Claim(s) 69 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 67, 68, 70, 74, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art (AAPA) in view of German Patent 629,335 (DE).

Claim 67: AAPA is outlined in the preamble to the claim, wherein a plug/screw combination is inserted into a hole in a fixture, but the hole is oversized with respect to the plug, resulting in the plug being carried only loosely in the hole.

AAPA fails to teach the claimed steps of applicant's improvement, i.e. providing at least one piece of a loosely-woven fabric carrying consolidated thereon a quick-setting filler material, withdrawing the undersized plug from the hole, enveloping the plug in the fabric piece, activating the filler material to initiate hardening and setting of the filler material, and inserting the enveloped plug without delay back into the hole, wherein the filler material expands to fill the oversized hole to capture the plug therein.

DE discloses a method of fixing a screw within a hole in brickwork or masonry, the hole in the brickwork being oversized, preventing the screw from properly anchoring within the hole. The method comprises providing a piece of cotton fabric (i.e. "loosely-woven fabric") a carrying consolidated thereon a filler material (see Figure 1), enveloping the screw **b** with the fabric piece

(see Figure 2), activating the filler material to initiate hardening of the filler material, and inserting the enveloped screw into the hole (see Figure 3), wherein the filler material expands to fill the oversized hole to firmly anchor the screw within the hole.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the filler-containing fabric piece of DE to envelop the plug of AAPA to fill the space between the plug and the oversized hole. It is noted that the AAPA/DE combination fails to explicitly teach the step of withdrawing the plug from the oversized hole before enveloping the plug with the fabric and re-inserting the plug into the hole. However, the most logical way to determine that a hole has been formed “oversized” with respect to the plug to be inserted therein is to insert the plug into the hole to see if it fits properly. If not, the plug would need to be withdrawn such that the fabric piece could be used. These determination/withdrawal steps would clearly be obvious to one having ordinary skill in the art.

Claim 68 and 74: As seen in Figure 1, the piece of fabric a is rectangular in shape.

Claim 70: As disclosed on page 3 (lines 20-23) of the DE translation, “other chemical compounds can be admixed, such as, e.g., alum, for the purpose of an improvement of the hardening or setting” of the filler material. Although no mention is made of the inclusion of “short, strength-enhancing fibers,” in view of the disclosure of DE as a whole, one having ordinary skill in the art would have recognized that an admixing of fibers to the filler material would also enhance the strength of the filler material when hardened, and the inclusion of such fibers within the filler material is thus deemed to have been obvious.

Claim 78: This claim recites a particular manner of packaging the filler-containing fabric pieces, wherein the fabric piece is pre-united with the plug. However, this packaging method, wherein

pieces to be used together are packaged together in a type of “kit” form, is known, *per se*. To utilize this known packaging technique for the fabric piece/plug combination of AAPA/DE would have been obvious to one having ordinary skill in the art to conveniently package the necessary fastener components for ready use.

Allowable Subject Matter

Claims 48-66, 71-73, and 75-77 are allowed.

Claim 69 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 48 (and dependent claims 49-54, 71, and 75): The prior art fails to teach or suggest the method as claimed, specifically the limitation in step (d) for “placing the fabric piece symmetrically over one end of the plug and smoothing it longitudinally along the plug” (as depicted in applicant’s Figure 5). DE and other references of record teach wrapping the fabric or filler piece around the fastener.

Regarding claim 55 (and dependent claims 56-61, 72, and 76): The prior art fails to teach or suggest the method as claimed, specifically the limitations in steps (d)-(f) wherein the fabric piece is placed over the hole, and the plug pressed thereagainst to drive both the plug and the fabric piece into the hole simultaneously (as depicted in applicant’s Figure 6). DE and other references of record teach wrapping the fabric or filler piece around the fastener.

Regarding claim 62 (and dependent claims 63-66, 73, and 77): The prior art fails to teach or suggest the method as claimed, specifically the limitations in step (a) for “a quick-setting, air-activated filler material” consolidated on the fabric piece. DE and other references of record teach water-activated filler material.

Regarding claim 69: The prior art fails to teach or suggest the method as claimed, wherein the filler-containing fabric piece is circular in shape. The circular shape permits the use of the fabric piece as depicted in either Figure 5 or Figure 6.

Response to Arguments

Applicant's arguments filed January 26, 2004, have been fully considered but they are not persuasive.

Applicant argues that, when considered in its entirety, i.e. *as a whole*, DE **excludes a plug**, and thus teaches away from the use of a plug. The examiner disagrees. There is no disclosure in DE that explicitly teaches away from the use of a plug (i.e. no statements like “by using the fabric piece, there is no extraneous requirement for a plug” or “this method is not recommended for use with a screw/plug combination”). To the examiner, DE teaches *as a whole* that, when it is desired to insert a fastener (of any type) into a rough opening in a wall or structure (DE discloses on page 3, line 9, of the translation that that these rough openings may be the result of imprecise drilling), any space between the fastener and the opening can be accommodated by using the fabric piece interspersed with filler material. Thus, the combination of DE with AAPA is still deemed proper.

Applicant's argument pertaining to the withdrawal/re-inserting steps is not convincing. DE discloses on page 4, lines 2-14, of the translation that the amount of space to be filled between the fastener and the opening can be accommodated simply by using more or less fabric material around the fastener. The examiner contends that the best way to determine how much fabric/filler material is required to fill that space is to insert the fastener in the opening to get a rough idea of how much space there is between the fastener and the opening. The fastener would then be withdrawn from the opening, and re-inserted therein after the fabric piece/filler material was applied thereto. This would clearly have been obvious to one having ordinary skill in the art at the time of the invention. In fact, the examiner can think of no other logical and reasonable way to do it.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Telephone inquiries regarding the status of this application, or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **David Bryant** whose telephone number is **(703) 308-1859**. Draft amendments or proposed changes to the application may be faxed directly to the examiner at any time via RightFAX at (703) 746-4213 (formal inquiries or responses should NEVER be faxed to this number). The examiner can normally be reached on **Mondays-Thursdays from 6:30 AM to 5:00 PM**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1789. The official fax phone number for the organization where this application or proceeding is 703-872-9306 for all communications (including After Final communications).

Other helpful telephone numbers are listed for applicant's benefit.

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David P. Bryant
Primary Examiner
Art Unit 3726